

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

SAM GINYARD

Claimant

VS.

THE BOEING COMPANY

Respondent

AND

INSURANCE CO. STATE OF PENNSYLVANIA

Insurance Carrier

)
)
)
)
)
)
)
)
)
)
)

Docket No. 236,436

ORDER

Claimant appeals from a preliminary hearing Order entered by Administrative Law Judge Jon L. Frobish on September 18, 1998.

ISSUES

The Administrative Law Judge found claimant had failed to prove accidental injury arising out of and in the course of employment. Claimant appeals that finding.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the record and considering the arguments, the Board finds the Order should be affirmed.

The Appeals Board does have jurisdiction to consider the issue raised. K.S.A. 1997 Supp. 44-534a.

Claimant alleges an aggravation of a previous back injury. He claims the new injury occurred January 28, 1998, when he bent over to pick up a tool at work, and continued to be aggravated each day thereafter. Claimant testified he felt a sharp pain in his back when he bent over to pick up the tool. He reported the injury but continued to work. Claimant did not believe he had a serious back injury at the time but the injury, according to claimant, continued to worsen.

In April 1998, claimant requested, and respondent provided, medical treatment. Respondent sent claimant to Dr. Anthony G.A. Pollock. Dr. Pollock had performed surgery on claimant's back in 1996 after an injury at a different employer. In April 1998, Dr. Pollock's initial report indicated the injury was related to work by aggravation. After a period of conservative treatment, he recommended surgery. But Dr. Pollock also wrote a letter, dated July 30, 1998, which suggests claimant's condition is a natural result from his earlier injury and surgery:

I believe that Mr. Ginyard's progressive disc disease is a natural progression following his previous discectomy at L4-5. He has had some narrowing of both spaces actually and I think that this has caused some decrease in the foraminal dimensions, such that now, he is having further nerve root impingement.

Claimant argues that this July 30, 1998, letter does not contradict the initial opinion that claimant has a work-related aggravation of his previous injury. The Board agrees the letter does not necessarily contradict the earlier opinion but concludes the evidence does not, without clarification, meet claimant's burden. The initial form and the subsequent letter leave Dr. Pollock's opinion unclear. And claimant's testimony does not, by itself, establish whether there has been a new accidental injury which aggravated the preexisting condition or whether, on the other hand, claimant's current need for treatment is simply from the natural progression of the earlier injury.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Order entered by Administrative Law Judge Jon L. Frobish on September 18, 1998, should be, and hereby is, affirmed.

IT IS SO ORDERED.

Dated this ____ day of November 1998.

BOARD MEMBER

c: Michael L. Snider, Wichita, KS
Eric K. Kuhn, Wichita, KS
Jon L. Frobish, Administrative Law Judge
Philip S. Harness, Director